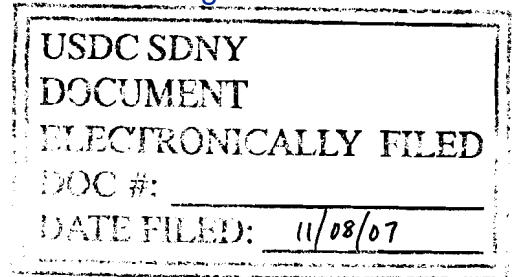


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November 7, 2007

**VIA FEDERAL EXPRESS**

The Honorable Richard M. Berman  
United States District Court  
Southern District of New York  
40 Center Street  
Courtroom 706  
New York, NY 10007

**MEMO ENDORSED**

*P2*

***Re: Elissa Becker v Eber Bros. Wine and Liquor Corp and Eber-NDC, LLC***  
***07 CV 4022 (RMB)***

Dear Judge Berman:

This office represents the Plaintiff in the above captioned action.

By Your Honor's endorsement order of Defendants' counsel's letter dated October 23, 2007 (the "Order"), requesting an adjournment of the settlement conference (the "Conference") in this action, the Conference was adjourned until November 9, 2007 and the parties were further Ordered to engage in good faith settlement discussions.

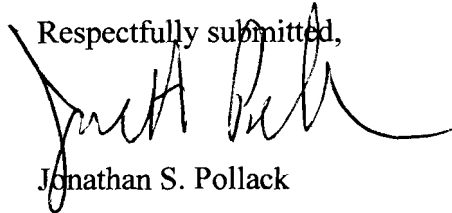
My client is the sole parent and guardian of a disabled child and due to certain prior existing obligations is unable to attend the Conference on November 9, 2007. Upon receipt of the Order, and with consent of opposing counsel, I immediately contacted Your Honor's chambers to determine if there might be a date earlier this week when Your Honor could hold the Conference (inasmuch as the week of November 12<sup>th</sup>, I will be in Los Angeles on business). As soon as Your Honor's chambers informed me that any day this week was acceptable, I informed opposing counsel of the same and requested that they provide me with an acceptable date; they said they would respond to me shortly. Additionally, for the fourth time since this action was commenced, in furtherance of the Order, I presented Defendants with Plaintiff's demand to settle this action; they said they would respond to that demand shortly, as well.

The Honorable Richard M. Berman  
October 7, 2007  
Page 2 of 2

It was not until yesterday that opposing counsel informed me that Friday, November 9, 2007 is the only date they can attend the Conference this week. Yesterday was also Defendants' first and only response to Plaintiff's demand for settlement, which response was wholly unacceptable. I think it is fair to say, and opposing counsel concurs, that at this juncture, the parties have reached an impasse.

In light of the foregoing, and with consent of opposing counsel, rather than burden the Court with a settlement conference that will likely be a waste of judicial economy, Plaintiff respectfully requests that the Conference be cancelled and that Your Honor permit Plaintiff, pursuant to Paragraph 2A of Your Honor's Individual Practices, to formally request leave to make a Motion for Summary Judgment consistent with Judge Peck's Discovery Order.

Respectfully submitted,



Jonathan S. Pollack

cc: Melanie Sarkis, Esq. (Attorney for Defendants/Via-Fax)  
Ms. Elissa Becker  
Steven E. Kurtz, Esq.

Conference with principals in attendance adjourned to 11/19/07	
② 2:00 P.M. (And, let's lose the gamesmanship if there is any going on).	
SO ORDERED:	Richard M. Berman
Date: 11/8/07	Richard M. Berman, U.S.D.J.